

EFFECTIVE JANUARY 15, 1999

INDIVIDUAL RULES AND PROCEDURES

Judge John E. Sprizzo (JES)

Courtroom 705 - (212) 805-6143 - Chambers 2201 - (212) 805-6135

All papers must have the appropriate case name, docket number, initials of Judge and initials and last four digits of social security number of attorney of record by his signature. FAX transmissions are not accepted.

Counsel should not call Chambers or the Courtroom Deputy without first consulting the Judge's Individual Rules and Procedures.

Parties are to confirm the issuance of an order, stipulation, etc., by either checking the New York Law Journal, the docket sheet or the Pacer system in the Clerk's Office. Do not call Chambers or the Courtroom Deputy.

Informal communication with Chambers is discouraged. Except for Orders to Show Cause and other emergency applications, calls will be accepted only between 3:00PM and 5:00PM.

Copies of correspondence between counsel should not be sent to the Court.

ALL CALLS REGARDING PRE-TRIAL and PRE-MOTION CONFERENCES and TRIAL CALENDAR SHOULD BE DIRECTED TO LINDA KOTOWSKI, COURTROOM DEPUTY at (212) 805-6143.

Approximately ninety (90) days after a complaint has been filed the Court will schedule a pre-trial conference. At that conference the Court will issue a scheduling order with respect to the completion of discovery, the filing of a **joint** pre-trial order and readiness for trial.

Pre-Trial and Pre-Motion Conferences will be held in Courtroom 705. It is a calendar call system. All lawyers appearing for such conferences must appear by 10:45AM to have their appearances noted by the Courtroom Deputy. The call of the calendar will begin at 11AM or as soon

thereafter as all appearances have been noted by the Courtroom Deputy. All matters involving discovery disputes and pre-motion conferences shall be heard on the second call of the calendar. All arguments on scheduled motions shall be heard commencing at 1:30PM. Counsel should check the New York Law Journal the day of the scheduled conference to determine the order in which the cases will be called. Any counsel who anticipate discovery or other disputes that will consume more than five minutes of the Court's time should consult with opposing counsel and arrange with the Courtroom Deputy a conference time later in the day.

Pre-Motion Conferences are required before the filing of any motions. Motions filed without a conference will not be accepted. **Courtesy copies of all motion papers are to be delivered to the MAIL ROOM - ROOM 15, Lobby Lobby, 40 Centre Street, on the same date as delivered to the Clerk of Court at 500 Pearl Street.** If in the Court's opinion oral argument is found desirable, the parties shall be scheduled at a time convenient to the court, not necessarily on the return date of the motion.

In all bankruptcy appeals and arbitration petitions, the moving party shall contact the Court immediately after filing the appeal/petition to arrange a Pre-Motion Conference. The noticed return date will not be an argument date and no appearance is necessary on that date. The argument date will be set by the Court at the Pre-Motion Conference.

Counsel are required to prepare a **joint** pre-trial order in accordance with the Court's instructions. Instructions are attached.

Parties are directed to be ready for trial on forty-eight (48) hours notice by the Court. If a specific date for trial has been set, parties are directed to be ready for trial on that date.

No adjournment of any conference, argument or trial date shall occur without leave of Court. **Applications to adjourn pre-trial and pre-motion conferences must be made by 12 Noon the day before the scheduled conference. Where adjournment is by consent, a stipulation and order must be submitted to the Court by 12 Noon the day before the scheduled conference. All**

requests for adjournments shall be directed to Ms. Kotowski. Adjournments of trial dates will be granted only in the most extraordinary of circumstances.

OTSC'S and other emergency applications must call Chambers before delivering said documents. Call must be made at least one hour in advance.

This Court will consider imposition of costs, including reasonable attorney's fees, for attorneys failing to appear or appearing excessively late for pre-trial conferences.

All **Default Judgments** submitted to the Court shall include the following: (a) why a default judgment is appropriate, including a description of the method and date of service of the original summons and complaint; (b) the proposed damages and the basis for each element of damages including interest, attorney's fees, and costs; (c) a proposed default judgment; (d) copy of the complaint; (e) copy of the affidavit of service of the original summons and complaint; and (f) if failure to answer is the basis for the default, a Certificate from the Clerk of Court stating that no answer has been filed. **Moving party must schedule and appear at a Pre-Trial Conference before submitting its application for default judgment.**

No legal memorandum submitted to the Court, including those filed in a bankruptcy appeal, may exceed twenty-five (25) pages, double-spaced, **on 8 ½ by 11-inch paper, typeset in standard 11-point font.** Applications to be relieved of the twenty-five (25) page limitation shall be made to the Court no later than ten days before the motion papers are due.

No reply memoranda shall be filed without leave of Court.

Pre-Sentence memoranda will not be accepted without leave of Court. Parties will be heard at time of sentencing.

Pro Hac Vice - Parties will be admitted orally. Parties must have someone who is admitted to the Southern District present to move their admission. **Submission of a formal motion is not necessary.** If papers are submitted they must contain the following: (a) Proposed Order Admitting counsel Pro Hac Vice; (b) Affidavit of Person Moving Admission; (c) Declaration of Movant and (d) Certificates of Good Standing.

DELIVERIES - Except for Courthouse Personnel, **ALL DELIVERIES** (including courtesy copies) are to be brought to the **MAIL ROOM - ROOM 15** in the Lower Lobby at **40 Centre Street. DO NOT COME TO CHAMBERS UNDER ANY CIRCUMSTANCES UNLESS DIRECTED TO DO SO BY THE COURT.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

-against-

____ Civ. ____ (JES)

JOINT PRE-TRIAL ORDER

-----X

The parties having conferred among themselves and with the Court pursuant to F.R.C.P. 16, now therefore the following statements, directions and agreements are adopted as the Joint Pre-Trial Order herein:

(1) JURISDICTION--VENUE: [State succinctly the claimed statutory basis of federal jurisdiction and venue and whether there is any dispute concerning jurisdiction or venue.]

(2) JURY--NON-JURY: [State whether any party has demanded a jury trial of all or any of the issues and, if so, whether each adversary accepts or contests a demand for jury trial.]

(3) AMENDMENTS--DISMISSALS: [Set forth any requested amendments to pleadings, dismissals of the case as to any unserved parties, additions or substitutions of parties, or disposition as to defaulting parties. Proposed amendments should include the basis for the amendment, the reason why the amendment is being raised at this time, and any objections.]

(4) RELIEF PRAYED: [State the elements of monetary damages, if any, claimed by each party involved in the case and the kind and general terms of any other type of relief prayed by each.]

(5) UNDISPUTED FACTS: [Give a plain, concise statement in separate, numbered paragraphs of the agreed facts pertaining to (a) liability, (b) damages, and (c) any special defenses, counterclaims, cross-claims or third party claims. Counsel should include a statement as to whether presentation of the case, in whole or in part, upon a formal Agreed Statement of Facts is feasible and advisable.]

(6) PLAINTIFF'S CONTENTIONS OF FACT: [List plaintiff's assertions on disputed factual matters.]

(7) DEFENDANT'S CONTENTIONS OF FACT: [List defendant's assertions on disputed matters of fact.]

(8) ISSUES OF LAW: [List brief, numbered statements of any points of law (substantive, evidentiary or procedural or concerning the measure or kind of relief prayed) which are or may be reasonably expected to be in controversy, citing the pertinent statutes, ordinances, regulations, cases and other authority mainly relied on by the party. If counsel are unable to agree on a statement of all triable issues, then those agreed shall be listed first. The remaining issues will then be listed as proposed by each party. Legal argument is not appropriate in the joint pre-trial order.]

(9) SEPARATE TRIAL OF ISSUES: [State whether separate trial of any of the issues is feasible and advisable.]

(10) REFERENCE TO A MASTER OR MAGISTRATE: [State whether reference of the trial herein or any of the issues to a Master or Magistrate is feasible, advisable and consented to.]

(11) PREVIOUS SUBSTANTIVE MOTIONS: [List all previous motions to dismiss, for summary judgment, for separate trial of issues, for consolidation of cases, for change of venue, or for pendente lite relief and the disposition or status thereof.]

(12) WITNESSES: [Prepare a separate list for each party of all witnesses (parties, experts or others) whom the party expects to call in person or through deposition, except witnesses who may be called only for impeachment or rebuttal. If any additional witnesses come to the attention of counsel prior to the trial, a supplemental list must be prepared, with notice to the opposing side, and filed with the Court. This supplemental list must include the reason why the witness's name was not set forth in the pretrial memorandum.]

(13) EXPERTS: [List any stipulations relating to the number or nature of experts to be called by parties or the Court.]

(14) EXHIBITS: [List (i) all exhibits stipulated to be admissible, (ii) plaintiff's proposed additional exhibits and (iii) any other party's proposed additional exhibits. Such lists shall make reference to all documents or other exhibits which the party expects to offer at the trial including depositions, answers to interrogatories and responses to requests for admissions. Exhibits not listed (except those to be used only for impeachment or rebuttal), will be excluded at trial. Exhibits not objected to will be listed as marked in evidence, subject to the Court's approval. Additional exhibits shall be marked for identification. Each exhibit listed shall be given a proposed designation (numbers for plaintiff; letters for defendant; initials to be added if multiple plaintiffs or defendants). Whenever a subject matter will reasonably require itemization, computation, or illustration, counsel shall prepare as proposed trial exhibits and list under this heading such schedules, summaries, diagrams, photographs or other similar exhibits as may be reasonably necessary for a clear presentation of the subject matter. Whenever practicable, such exhibits should be available at the pretrial conference.]

(15) PRECLUSION: Witnesses or exhibits not listed in accordance with the terms of this joint pre-trial order, or supplemental pre-trial order filed at least thirty (30) days in advance of trial, shall be precluded at trial.

(16) TRIAL COUNSEL: Counsel who will try the case for the respective parties are : [List names and telephone numbers.]

For Plaintiff:

For Defendant:

(17) ESTIMATE OF TRIAL TIME: [Make a careful estimate of the number of court trial days required for presentation of each party's case to the nearest one-half day.]

(18) TRIAL DATE: [Set forth any suggested trial date and a statement of any anticipated problems concerning trial attendance of parties, counsel or essential witnesses or other practical problems which the judge should consider when setting the trial date.]

(19) JURY SELECTION QUESTIONS: IT IS ORDERED that requests for voir dire questions to be asked of prospective jurors shall be submitted to the Court at the time when the Joint Pre-Trial Order is filed.

(20) REQUESTS FOR JURY INSTRUCTIONS: IT IS FURTHER ORDERED that requests for instructions shall be submitted to the trial court at the time that the Joint Pre-Trial Order is filed, but there is reserved to counsel for the respective parties the right to submit supplemental requests for instructions during the course of the trial or at the conclusion of the evidence on matters that cannot be reasonably anticipated, unless the Court has directed otherwise, and provided that no request to charge shall be accepted unless made and submitted to the Court forty-eight (48) hours in advance of the time that summation commences.

(21) MISCELLANEOUS: [Set forth any other appropriate matters which will aid in disposition of the action.]

(22) MODIFICATION OF ORDER: IT IS ORDERED that the Court may in order to prevent manifest injustice or for good cause shown, at the trial of the action or prior thereto upon application of counsel for either party, made in good faith, or upon motion of the Court, modify this Joint Pre-Trial Order upon such conditions as the Court may deem just and proper.

Dated: New York, New York

John E. Sprizzo
United States District Judge

APPROVED AS TO FORM
AND SUBSTANCE:

Attorney for Defendant

Attorney for Plaintiff

Attorney for Third Party Deft.

SUPPLEMENTARY INSTRUCTIONS IN PREPARATION FOR TRIAL

1. Prior to the trial, all exhibits must be pre-marked and exchanged between counsel (using numerals for plaintiff's exhibits and letters for defendant's exhibits). Parties should stipulate as to authenticity and admissibility to the extent possible. As to any exhibit as to which there is to be an objection, the pre-trial order should state the grounds for the objection with supporting legal authority. Exhibits not pre-marked and exchanged between counsel will be excluded at trial.
2. At the beginning of the trial, a complete extra set of documentary exhibits should be handed to the Judge for his use during the trial and a list of all exhibits should be supplied to Judge Sprizzo's clerk and to the Judge, with all exhibits numbered in uniformity with the pre-trial order. Counsel should also have copies of any depositions which are to be read in a jury case. If it is a non-jury case, counsel should mark the portions of each deposition which are to be offered in evidence and supply them to the court reporter who is transcribing the transcript.
3. At the end of trial, counsel should make sure they have all of their exhibits. The clerk is not responsible for them. If it is a non-jury case, counsel should submit their exhibits when they file their post-trial briefs, which are to be geared to the testimony. It is suggested that counsel order the transcript daily copy to expedite the case.
4. In all non-jury cases, the parties shall submit, at the conclusion of a trial or at said time as the Court may fix, proposed finding of facts and conclusions of law, setting forth the legal and factual contentions of the party together with supporting legal authority.
5. Where deposition testimony is to be offered in evidence at trial, the parties shall confer and agree to the extent possible as to what depositions or portions thereof shall be admitted into evidence. All counsel are instructed to avoid unnecessary, repetitive and cumulate deposition testimony.
6. Counsel may submit on the date fixed for the filing of their Joint Pre-Trial Order, a pre-trial memoranda containing any legal argument which counsel wishes the Court to consider with respect to any legal issues which counsel believes will arise at trial. Such a memorandum shall not exceed twenty-five (25) pages.